HARRIS-HEADRICK

IBLA 81-738 Decided July 29, 1982

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting high bid for competitive oil and gas lease. NM-44628.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease

Where the high bidder for a competitive oil and gas lease presents evidence on appeal that its bid is not spurious or unreasonable and Geological Survey fails to provide a reasoned explanation in support of BLM's decision to reject the bid as inadequate, the decision will set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

APPEARANCES: Gary W. Harris and Charles H. Headrick, Stillwater, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Harris-Headrick, a general partnership, has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated April 14, 1981, rejecting its high bid for parcel 38 at a competitive oil and gas lease sale held on February 24, 1981. Appellant submitted a bid of $3,080 ($77 per acre) for 40 acres of land situated in the SW 1/4 SW 1/4 sec. 29, T. 17 N., R. 24 W., Indian meridian, Ellis County, Oklahoma, in the Northwest Packsaddle Field. BLM rejected the bid based on a recommendation by the Geological Survey (Survey). 1/ In a memorandum to the BLM State Office, dated March 12,

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1/ The functions of the Conversion Division, Geological Survey, have been subsumed in the new Minerals Management Service (MMS). Since, however, Survey was the repository of the relevant functions as of the time these actions occurred, we will refer to "Survey" rather than "MMS" throughout this decision.

1981, the Deputy Conservation Manager for Resource Evaluation, South Central Region, Survey, recommended rejection because "comparable tracts in the vicinity of the parcel have sold for considerably more than the bid price." The list of "comparable tracts" is as follows:

1. T. 17 N., R. 25 W., Sec. 23--$118.00/acre in 2-77
2. T. 17 N., R. 24 W., Sec. 6--$311.79/acre in 10-77
3. T. 16 N., R. 24 W., Sec. 6--$113.69/acre in 4-77
4. T. 17 N., R. 24 W., Sec. 16--$277.83/acre in 2-80

*5. T. 17 N., R. 25 W., Sec. 22--$37.25/acre in 5-72

6. T. 17 N., R. 24 W., Sec. 4--$134.05/acre in 3-79

* Equivalent to $87.83/acre in 1981 inflated at 10 percent per year.

In its statement of reasons for appeal, appellant contends that its high bid reflects the fair market value of parcel 38 for oil and gas leasing. Appellant states that, among the four bidders, there were no oil and/or gas companies, indicating "a lack of interest on their part." Furthermore, the records of the Oklahoma Corporation Commission (Commission) indicate that there is only one producing well within 1 mile of the parcel, the Apexco, Inc., Berryman, completed in 1978. Appellant states that the Berryman "produced only 400,000 cubic feet of natural gas per day at initial test and was drilled to a total depth of 13,959 feet which is not an economically attractive return for a well at that depth in view of present drilling costs." Appellant also states that Commission records indicate that the Commission has established "values" for leases in the vicinity of parcel 38 at "$125, $75, and $50/acre." These values are taken from three decisions of the Commission, which ordered the institution of pooling arrangements between various oil and gas owners. A value per acre, representing a "cash bonus," was established by the Commission for those owners who elected not to participate in the pooling arrangement. Under each agreement, one well was to be drilled by the designated operator.

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld the exercise of that authority so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. Harry Ptasynski, 48 IBLA 246 (1980); B. D. Price, 40 IBLA 85 (1979); Frances J. Richmond, 29 IBLA 137 (1977). Departmental policy in the administration of the competitive leasing program is to seek the return of fair market value for the grant of leases and the Secretary reserves the right to reject a bid which will not provide a fair return. Coquina Oil Corp., 29 IBLA 310, 311 (1977). See Exxon Co., U.S.A., 15 IBLA 345, 357-58 (1974).

Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on the Survey's reasoned analysis. Gerald S. Ostrowski, 34 IBLA 254 (1978); Coquina Oil Corp., supra; Arkla Exploration Co., 25 IBLA 220 (1976). When BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision. Southern Union Exploration Co., 41 IBLA 81, 83 (1979).

Survey's March 1981 memorandum, however, does not provide a reasoned explanation supporting BLM's decision to reject appellant's bid. The memorandum provides no explanation as to why the listed tracts are considered to be "comparable" to parcel 38, in terms of potential oil and gas reserves. This is an especially critical omission in view of the often considerable distance between parcel 38 and the listed tracts. We note that almost all of the tracts are within the same known geologic structure (KGS). However, in the absence of some evidence regarding oil and gas potential within the KGS, we attribute little or no weight to this fact. On the other hand, appellant indicates that the only producing well within 1 mile of parcel 38 has not demonstrated "an economically attractive return." Accordingly, we cannot conclude that appellant's bid of $77 per acre is either spurious or unreasonable.

In so holding, we do not rely on appellant's contention that there was a lack of competitive interest on the part of oil and/or gas companies in parcel 38. As we said in California Energy Co., 63 IBLA 159, 163 (1982), involving a high bid for a competitive geothermal resources lease: "While the lack of bids may on the one hand suggest that such bidders found parcel 20 to have little value, it could also reflect a determination by the companies to use finite financial resources on parcels more attractive to each company's particular plans." Moreover, even assuming the former, a lack of competitive interest offers very little evidence with regard to the actual fair market value of the land for oil and gas leasing.

We also give very little weight to appellant's statement regarding those "values" which the Commission established for leases in the vicinity of parcel 38, which values compared favorably with appellant's bid. We recognize that, in each case, the "cash bonus" represented a satisfaction of an oil and gas owner's rights and interests in the well drilled under the pooling arrangement, i.e., to participate in production from that well, and was in lieu of a proportionate share in that production. The pooling orders which appellant submitted, by their terms, did not apply to all horizons or potentially productive reservoirs. They are thus insufficient to serve as a basis for ascertaining the value of a lease which embraces all horizons.

Where the high bidder for a competitive oil and gas lease presents evidence on appeal that its bid is not spurious or unreasonable and Survey fails to provide a reasoned explanation in support of BLM's decision to reject the bid as inadequate, we will set aside the decision and remand the case for compilation of a more complete record and readjudication of the bid.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded to BLM for further action consistent herewith.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Edward W. Stuebing
Administrative Judge